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LIBERTY UNDER LAW

HON. CHARLES EVANS HUGHES

Former Justice of the United States Supreme Court

(From an address given by him in February, entitled "The Antidote for Bolshevism," and printed in the *Christian Statesman* for March.)

OF COURSE, we can have no involuntary servitude in this country. The Thirteenth Amendment to the Federal Constitution was intended to render impossible any state of bondage, to make labor free and abolish slavery of whatever name or form. But the right thus secured is an individual right. The right of individual freedom of action protected by the Constitution—the right of an individual to work or to cease to work at his will—is one thing; the right to combine with others to strike for the purpose of enforcing demands is quite another. The latter right is not protected by the Constitution as an absolute right and, like the right of employers to act in concert or combination, is subject to such reasonable restraint as the legislative discretion may find to be necessary for the protection of the vital interests of society. Our institutions of freedom do not render us impotent to protect ourselves against the domination of any combination or any concert threatening to destroy communities by interrupting their facilities of communication or by stopping their necessary supplies. Organized power of capital or labor cannot be permitted to work its own will to the injury of the public.

We need a permanent solution of these problems. War legislation is not permanent, and war remedies merely attest a need which may survive them. The industrial situation in its relation to basic industries, no less than in the case of transportation, needs comprehensive treatment. If in these vital matters concerted action to obtain redress of grievances is to be placed under limitations in order to protect the public, then the public must perform its duty through its appropriate organs in making adequate provisions for the peaceful and fair settlement of industrial disputes through agencies fairly representing all concerned in such disputes. In ordinary civic relations we have substituted courts and the processes of justice for the strong arm and vigilance committee. The time is at hand when we must furnish suitable machinery for industrial justice, at least so far as those vital enterprises are concerned upon which our life depends. It should not be impossible to do this, if we are sincere in our demands for justice. The processes of justice imply the creation of impartial tribunals and the opportunities for fair consideration. They imply that the parties to the dispute cannot take the law into their own hands and sacrifice the peace and well being of the community to their contentions. The problem is often discussed as though it simply concerned employers and employees. Stockholders may be able to stand the conflict; employees may have the benefit of strike funds. It is the people who suffer, and when the public need is traceable to a removable cause it is the part of wisdom to take just and effective measures to remove that cause, and a most important measure to that end is to provide instrumentalities of industrial justice in relation to these essential activities. With the

apostles of violence silenced, the schemes of inciters to disorder and revolution frustrated, law and order preserved, with an inflexible demand for loyalty on the part of public servants, with provision for the peaceful and just settlement of industrial disputes, thus making possible effective measures against interruption of essential services to the community, we should go far toward making class rule impossible.

But all that I have said implies the existence of a sound and dominant democratic sentiment. Protective measures cannot be provided, still less maintained, unless throughout our country there is a deep-seated affection for the Republic, an earnest desire for stability, and appreciation of the only way in which there can be rational progress. It is not enough to secure a temporary peace, important as that is. If the seeds of wrong reason, of distrust and discontent, are sown and the soil is congenial, we must expect the harvest.

The time has come for a better appreciation of our economic order. What is good must be understood and candidly and fearlessly defended; what is bad cannot last save by the rule of force, which will make the class struggle inevitable. Fortunately, our prosperity has been so great and so widely shared that throughout the country the conserving forces predominate and an intelligent hearing is assured. Those who have a stake in stability far outnumber the vain dreamers or those who seek profit in fomenting discontent. And, on every hand, with an unexampled freedom of opportunity, experience is constantly teaching its salutary lessons.

INCREASED PRODUCTIVITY

There are certain primary truths which must constantly be kept before our people. The ultimate economic gain must be found in production and thrift. The world waits for increased productivity. We may enjoy a prosperity beyond anything hitherto known, if only we will work and save. Agitation that curtails production helps no one, least of all the workers. For every wage increase, for every improvement in conditions of labor, for every protection against sickness, old age, and death, for every betterment in civic facilities, for the care of the weak and helpless, for all the helpful ministrations we desire to multiply, we must look to production to pay the bill. Can we not drive home the lesson that decreased productivity means disaster to all?

Production requires expert knowledge, skillful management, the rewarding of invention and initiative, and it also requires contented labor. It is idle to expect prosperity if any of these conditions are absent. Even the Bolsheviks have found the necessity of having highly paid specialists. Is there anything surer than that there will be no prosperity for industry on a dead level? The man who knows must be paid; the man of genius in enterprise must be kindled with ambition and suitably rewarded. The great adventure must make its appeal. Our land is dotted with successful industries opening broad opportunities of labor which were only made possible by the vision of men who were willing to take risks because of the rich promise of success. As I have elsewhere said, there is no alchemy which can transmute into communal riches the poverty of individual hopes. Our people are intelligent enough to appreciate this. The history of enterprise is an open book. The essence

of the matter is—and let it be insistently proclaimed and explained, so that instead of a mere tradition we shall have reasoned conviction to combat the apostles of delusion—that if you would have adequate production to make progress possible, taking human nature as it is and as it is likely to remain, you must have the constant incentive to exceptional endeavor in exceptional reward; you must recognize the service of brains as well as the service of brawn; you must secure the rights of property honestly acquired; you must protect every man's savings which concretely represent the gains of effort; you must give capital, which represents the investment of those savings, a fair return; you must keep open the avenues to endeavor, so that there is reasonable assurance that every one who can render a service to society has a chance to render it, and an expectation of proper consideration if it is rendered; and that thus only you will make possible that constant development of productive activity in agriculture, in mining, in industry, in commerce, which creates prosperity and gives opportunity for improving labor conditions.

It is equally necessary to productivity, as I have said, to have contented labor, and this means that upon economic, no less than upon humane, grounds it is most important to avoid dislocation and interruption through disregard of the demands for fair treatment of labor. Reasonable hours, fair wages, proper housing, protection against injury and disease, provision for old age and for families in case of the death of the breadwinners—these are reasonable demands the meeting of which will conduce to contentment and efficiency. Justice to labor is a vital part of any program of ample production.

JUSTICE, LABOR, AND THE COURTS

But justice must have its organs. It is easy to say "Do what is fair," but the question remains, "What is the fair thing to do?" It is inevitable that there should be disagreement, and the difficulty is to resolve the controversy by the processes of reason. "Come, let us reason together," is the watchword of democracy; it should be the watchword of our industrial life. Labor has a right to the security of the processes of reason and so has capital. We have made little progress in providing the machinery for industrial justice, and in this respect we are still uncivilized. We are still at the stage corresponding to that of trial by battle and trial by ordeal in the early law of procedure. But we cannot go on indefinitely in this way. What is absolutely necessary, as I have pointed out in the case of the basic industries upon which the community's life depends, is clearly advisable throughout the field of industrial activity—although when the vital interest of the community is not involved, the plan should not go further than to facilitate and enforce agreements.

I believe in the recognition of the right of collective bargaining on the part of labor through representatives of their own choosing. The qualifications may be made that these should be proper representatives and not those who aim at the demoralization of our industrial life and use labor disputes as a means to promote sinister designs. Employers and employees should favor the speediest and most direct method of getting at the facts in controversy. It is a hardy issue that survives the painstaking examination of the facts, and it cannot be doubted that

the provision of representative instrumentalities of conference and conciliation will be of the greatest benefit to labor as well as capital. Labor has nothing to gain by the unnecessary interruption of industry. While the same sanctions may not be justified when the interests of the community are not so vitally concerned as in the case of public utilities and basic industries, there should be the greatest readiness to secure voluntary co-operation through boards and representative councils by which disputes may be settled peacefully. It is no time for artificialities or narrow views. Fair inquiry should result in agreement, and agreements when made should be binding and enforced under apt provisions of law. The class spirit thrives on the sense of injustice, and it is in unredressed grievances that agitators and disturbers of peace find their opportunity. As Sidney Smith said, there is no use in trying to make those content whose game is not to be content. But the American working-man is well disposed, intelligent, and sensible. He wants work and fair treatment and is not looking for trouble. It is true that the class spirit is easily aroused. Meet it with the vigorous assertion of the community spirit and by providing so far as possible the machinery of industrial justice.

LIMITS OF CONTROL BY LABOR

The participation of labor in management is often suggested thoughtlessly. I see little prospect of a successful voyage in having the seaman divide the captain's responsibility in navigating the vessel. Skillful management is the prime condition of success, and it will not be to the advantage of labor to embarrass the discharge of executive functions or to attempt to share responsibility for business policy. And if labor is treated fairly in all the matters that directly concern labor, it is to the interest of labor that the freedom of enterprise should not be restricted. The object really sought, I take it, is the assurance of fair wages, reasonable hours, and proper working conditions. The provision for suitable representation in dealing with all disputes which may arise as to such matters, the creation of boards of inquiry or councils of conciliation, the fair ascertainment of facts, and the reaching of agreements through appropriate conference—these are the safeguards to which labor is fairly entitled and through which enterprise may find the stability essential to its prosperity.

Education, said a great writer recently, is the first concern of democracy. Undoubtedly we are suffering much at the hands of the intelligent, and it is dangerous to tempt the most well-informed to abuse conscious power. But the conspiracies of the intelligent can be met only by the diffusion of knowledge. It should not be difficult to have it understood that the community will not tolerate the suppression of its interest by force or organized power of any sort, whether of capital or labor, and in an intelligent commonwealth we may expect attention to the voice of reason and the lessons of experience. The remedy is to repress the Hunnish spirit and keep the schools full. But education should have direction, and in a republic the institutions and fundamental principles of the republic should be made clear to every one. We have had too much stress in our schools upon learning the anatomy of government and too little upon the inculcation of the spirit of democracy.

We need more attention to the culture of the democratic spirit, the study of the principles of democratic government, and of the special guaranties of our representative system.

THE VISION OF THE ETERNAL

And in teaching the principles of democracy, it must never be overlooked that while democracy implies the rule of the majority the success of the great experiment will depend on the self-restraint alike of individuals and majorities. It is our peculiar fortune as a people that we have guaranteed to the helpless individual, in the most hopeless minority, the exercise of certain unalienable rights, and have erected tribunals, whose duty it is to sustain them. But it must never be forgotten that this willingness to recognize the essential rights of individuals, this capacity for self-restraint, is nurtured not merely by education, but by the precepts of religion. It is significant that in the most recent declaration of purpose to overturn the Government of the United States the conspirators have declared their hatred of religion. The perpetuity of democracy depends on the sentiment of brotherhood, and finds its strong support in the faith which inspires a sweet reasonableness and the love of service. It is the endeavor to understand each other, to help each other, to brighten the lives of our fellows, to succor the distressed, to give courage to the faint-hearted, to raise the fallen, to bind up the wounds of those who have suffered from disease and vice that manifests the democratic spirit. And that spirit is essentially the religious spirit. A community without religious faith is doomed to materialism and the bitter warfare of class selfishness. There can be no peace in society without the vision of the Eternal.

SOME QUESTIONS ABOUT ENDURING PEACE

By THEODORE STANFIELD

ONCE again mankind longs for enduring peace and sadly recognizes that it is not in sight. All are agreed that no proposal that insures a lasting peace and justifies disarmament has been forthcoming from any quarter. What are we going to do about it?

For centuries the subject has been studied and several attempts to establish peace for all time have been made. All have failed. "Grim-visaged war" is still our curse.

Why has the preventive of war not been found? Have previous studies and attempts been conducted by scientific methods? Has history, which is a record of almost continuous warfare, been subjected to such methods of inquiry? Has the problem been approached objectively or subjectively? Do we understand how it can be that humanity has advanced coincident with war? Have previous attempts to prevent war been directed at its primary causes, its secondary causes, or its manifestations? What is the primary cause of war?

In Immanuel Kant's writings the primary cause of war is illuminatingly treated. His views can perhaps be best presented in brief by quoting the following from Dwight W. Morrow's book, "The Society of Free States":

"Man, unlike the other animals, is endowed with reason. He does not, however, act always in accordance with his reason. Rather are his acts fitful, sometimes guided by reason, sometimes by instinct. We must believe, however, that all the capacities which Nature has implanted in any creature are destined to unfold themselves if sufficient time be allowed. And this must be true of man's natural capacity to use his reason, which will be fully developed if we allow sufficient time.

"But man's reason develops only by its constant exercise; by failures and successes it gradually advances from one stage of insight to another. No man within the short span of life allotted him can get enough experiments with his reason to enable him to live completely in accordance with that high faculty. To live rationally, however, is always his goal, and he may hope to make such progress that his children may start from a higher level than that from which he started. Thus, the goal which, for lack of experience, he himself can never attain, the race to which he belongs may ultimately reach. And by the quality of his own life he may advance the species toward that ultimate goal.

"It seems as if Nature had intended, not that man should have an *agreeable* life, but a *hard* life. Nature, having endowed man with reason, left him without the natural weapons which are part of the equipment of the animals that act by instinct. Man must invent his own covering, his own shelter, his own means of security. He must struggle from the greatest crudeness of life to his highest capabilities and to internal perfection in his habit of thought. Moreover, he must continue the struggle, though the weary toil be for the sake of those who come after him, that they may live in the dwelling upon which he and his long line of forefathers have labored.

"The two great human qualities which drive the individual forward in this self-culture are the social instinct and the self-assertive instinct. Man has a strong inclination to associate himself with his fellows. He has, however, also a strong inclination to individualize himself—to outstrip his fellows. He expects others to resist him, just as he knows that he is inclined to resist others. And this mutual antagonism awakens the powers of man, overcomes his propensity to indolence, impels him through desire for honor, or power, or wealth, to strive after rank among his fellow-men. His desire for possession, his envious jealousy and vanity, even his love of power, are the qualities which have lifted him from the simplicity of an Arcadian shepherd life. Man is social and desires concord, but man is competitive and is driven to strife. He desires to live in peace with his fellows, and he fights with his fellows in order that he may have peace.

"But it is impossible for men long to exist beside one another in wild, lawless freedom. By the very evils involved in lawless liberty man is compelled (not necessarily consciously) to pass from a state of lawlessness and to enter into a civil constitution in which the germs of his humanity can be unfolded. The greatest practical problem for the human race is, therefore, the establishment of a civil society universally administering right in accordance with law. This requires a society which permits the greatest liberty, and to that extent involves antagonism of its members, and a society which at the same time determines the limits of individual liberty in order that it may coexist with the liberty of others. The attainment of a civil constitution in which liberty and order would be perfectly